

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 432**

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**Introduced by Assembly Member Garcia**

February 16, 2007

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*An act to amend Section 11234 of the Business and Professions Code, relating to real estate.*

LEGISLATIVE COUNSEL'S DIGEST

AB 432, as amended, Garcia. Real estate: time-share plans.

Existing law establishes the Vacation Ownership and Time-Share Act of 2004. The act requires a time-share plan developer, prior to selling, offering, or disposing of a time-share interest in the state, to ~~provide~~ *prepare, for issuance by* the Real Estate Commissioner, a public report ~~containing certain disclosures~~, as specified, or, for a plan located outside of the state, a public report authorized for use by that state containing disclosures substantially equivalent to or greater than those required by California law.

~~This bill would declare the intent of the Legislature to enact legislation authorizing a developer of a time-share plan being sold in multiple states to submit a public report issued by another state regarding that plan with an addendum including the nonredundant disclosures required by California law.~~

*This bill would authorize a developer to submit, upon approval by the commissioner, a public report that combines, in a manner prescribed by the commissioner, the disclosures required by California law and the information required to be disclosed in a public report issued by a regulatory agency in one or more other states.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 11234 of the Business and Professions*  
2     *Code is amended to read:*

3     11234. A developer shall prepare, for issuance by the  
4     commissioner, a public report that shall fully and accurately  
5     disclose those facts concerning the time-share developer and  
6     time-share plan that are required by this chapter or by regulation.  
7     The developer shall provide the public report to each purchaser of  
8     a time-share interest in—~~any~~ a time-share plan at the time of  
9     purchase. The public report shall be in writing and dated and shall  
10    require the purchaser to certify in writing the receipt thereof. The  
11    public report for a single site time-share plan is subject to the  
12    requirements of subdivision (a). The public report for a specific  
13    time-share interest multisite time-share plan is subject to the  
14    requirements of both subdivisions (a) and (b). The public report  
15    for a nonspecific time-share interest multisite time-share plan is  
16    subject to the requirements of subdivision (c). For time-share plans  
17    located outside of the state, a public report that has been authorized  
18    for use by the situs state regulatory agency and that contains  
19    disclosures as determined by the commissioner upon review to be  
20    substantially equivalent to or greater than the information required  
21    to be disclosed pursuant to this section may be used by the  
22    developer to meet the requirements of this section. *A developer*  
23    *may, upon approval by the commissioner, submit a public report*  
24    *that combines, in a manner prescribed by the commissioner, the*  
25    *information required to be disclosed by the applicable subdivisions*  
26    *of this section and the information required to be disclosed in a*  
27    *public report issued by a regulatory agency in one or more other*  
28    *states.*

29    (a) Public reports for a single site and those component sites of  
30    a specific time-share interest multisite time-share plan that are  
31    offered in this state shall include the following:

32    (1) The name and address of the developer and the type of  
33    time-share plan being offered and the name and address of the  
34    time-share project.

1 (2) A description of the existing or proposed accommodations,  
2 including the type and number of time-share interests in the  
3 accommodations, and if the accommodations are proposed or not  
4 yet complete or fully functional, an estimated date of completion.

5 (3) The number of accommodations and time-share interests,  
6 expressed in periods of seven-day use availability or other time  
7 increments applicable to the time-share plan, committed to the  
8 multisite time-share plan, and available for use by purchasers and  
9 a representation about the percentage of useable time authorized  
10 for sale, and if that percentage is 100 percent, then a statement  
11 describing how adequate periods of time for maintenance and  
12 repair will be provided.

13 (4) A description of any existing or proposed amenities of the  
14 time-share plan and, if the amenities are proposed or not yet  
15 complete or fully functional, the estimated date of completion.

16 (5) The extent to which financial arrangements have been made  
17 for the completion of any incomplete, promised improvements.

18 (6) A description of the duration, phases, and operation of the  
19 time-share plan.

20 (7) The name and principal address of the managing entity and  
21 a description of the procedures, if any, for altering the powers and  
22 responsibilities of the managing entity and for removing or  
23 replacing it.

24 (8) The current annual budget as required by Section 11240,  
25 along with the projected assessments and a description of the  
26 method for calculating and apportioning the assessments among  
27 purchasers, all of which shall be attached as an exhibit to the public  
28 report.

29 (9) Any initial or special fee due from the purchaser at closing  
30 together with a description of the purpose and the method of  
31 calculating the fee.

32 (10) A description of any financing offered by or available  
33 through the developer.

34 (11) A description of any liens, defects, or encumbrances on or  
35 affecting the title to the time-share interests.

36 (12) A description of any bankruptcies, pending civil or criminal  
37 suits, adjudications, or disciplinary actions of which the developer  
38 has knowledge, that would have a material effect on the developer's  
39 ability to perform its obligations.

1 (13) Any current or expected fees or charges to be paid by  
2 time-share purchasers for the use of any amenities related to the  
3 time-share plan.

4 (14) A description and amount of insurance coverage provided  
5 for the protection of the purchaser.

6 (15) The extent to which a time-share interest may become  
7 subject to a tax lien or other lien arising out of claims against  
8 purchasers of different time-share interests.

9 (16) A statement disclosing any right of first refusal or other  
10 restraint on the transfer of all or any portion of a time-share interest.

11 (17) A statement disclosing that ~~any~~ a deposit made in  
12 connection with the purchase of a time-share interest shall be held  
13 by an escrow agent until expiration of any right to cancel the  
14 contract and that ~~any~~ a deposit shall be returned to the purchaser  
15 if he or she elects to exercise his or her right of cancellation.  
16 Alternatively, if the commissioner has accepted from the developer  
17 a surety bond, irrevocable letter of credit, or other financial  
18 assurance, each of which shall be enforceable by the association,  
19 in lieu of placing deposits in an escrow account: (A) a statement  
20 disclosing that the developer has provided a surety bond,  
21 irrevocable letter of credit, or other financial assurance in an  
22 amount equal to or in excess of the funds that would otherwise be  
23 placed in an escrow account, (B) a description of the type of  
24 financial assurance that has been obtained, (C) a statement that if  
25 the purchaser elects to exercise his or her right of cancellation as  
26 provided in the contract, the developer shall return the deposit,  
27 and (D) a description of the person or entity to whom the purchaser  
28 should apply for payment.

29 (18) A statement that the assessments collected from the  
30 purchasers will be kept in a segregated account separate from the  
31 assessments collected from the purchasers of other time-share  
32 plans managed by the same managing entity, along with a statement  
33 identifying the location of the account and a disclosure of the rights  
34 of owners to inspect the records pertaining to their accounts.

35 (19) If the time-share plan provides purchasers with the  
36 opportunity to participate in an exchange program, a description  
37 of the name and address of the exchange company and the method  
38 by which a purchaser accesses the exchange program.

39 (20) Any other information that the developer, with the approval  
40 of the commissioner, desires to include in the public report.

1 (21) Any other information reasonably requested by the  
2 commissioner.

3 (b) Public reports for specific time-share interest multisite  
4 time-share plans shall include the following additional disclosures:

5 (1) A description of each component site, including the name  
6 and address of each component site.

7 (2) The number of accommodations and time-share interests,  
8 expressed in periods of seven-day use availability or other time  
9 increments applicable to each component site of the time-share  
10 plan, committed to the multisite time-share plan and available for  
11 use by purchasers and a representation about the percentage of  
12 useable time authorized for sale, and if that percentage is 100  
13 percent, then a statement describing how adequate periods of time  
14 for maintenance and repair will be provided.

15 (3) Each type of accommodation in terms of the number of  
16 bedrooms, bathrooms, and sleeping capacity, and a statement of  
17 whether or not the accommodation contains a full kitchen. For  
18 purposes of this description, a “full kitchen” means a kitchen  
19 having a minimum of a dishwasher, range, sink, oven, and  
20 refrigerator.

21 (4) A description of amenities available for use by the purchaser  
22 at each component site.

23 (5) A description of the reservation system, which shall include  
24 the following:

25 (A) The entity responsible for operating the reservation system,  
26 its relationship to the developer, and the duration of any agreement  
27 for operation of the reservation system.

28 (B) A summary of the rules and regulations governing access  
29 to and use of the reservation system.

30 (C) The existence of and an explanation regarding any priority  
31 reservation features that affect a purchaser’s ability to make  
32 reservations for the use of a given accommodation on a  
33 first-come-first-served basis.

34 (6) The name and principal address of the managing entity for  
35 the multisite time-share plan and a description of the procedures,  
36 if any, for altering the powers and responsibilities of the managing  
37 entity and for removing or replacing it.

38 (7) A description of any right to make any additions,  
39 substitutions, or deletions of accommodations, amenities, or  
40 component sites, and a description of the basis upon which

1 accommodations, amenities, or component sites may be added to,  
2 substituted in, or deleted from the multisite time-share plan.

3 (8) A description of the purchaser's liability for any fees  
4 associated with the multisite time-share plan.

5 (9) The location of each component site of the multisite  
6 time-share plan, the historical occupancy of each component site  
7 for the prior 12-month period, if the component site was part of  
8 the multisite time-share plan during the 12-month time period, as  
9 well as any periodic adjustment or amendment to the reservation  
10 system that may be needed in order to respond to actual purchaser  
11 use patterns and changes in purchaser use demand for the  
12 accommodations existing at that time within the multisite  
13 time-share plan.

14 (10) Any other information that the developer, with the approval  
15 of the commissioner, desires to include in the time-share disclosure  
16 statement.

17 (c) Public reports for nonspecific time-share interest multisite  
18 time-share plans shall include the following:

19 (1) The name and address of the developer.

20 (2) A description of the type of interest and usage rights the  
21 purchaser will receive.

22 (3) A description of the duration and operation of the time-share  
23 plan.

24 (4) A description of the type of insurance coverage provided  
25 for each component site.

26 (5) An explanation of who holds title to the accommodations  
27 of each component site.

28 (6) A description of each component site, including the name  
29 and address of each component site.

30 (7) The number of accommodations and time-share interests,  
31 expressed in periods of seven-day use availability or other time  
32 increments applicable to the multisite time-share plan for each  
33 component site committed to the multisite time-share plan and  
34 available for use by purchasers and a representation about the  
35 percentage of useable time authorized for sale, and if that  
36 percentage is 100 percent, then a statement describing how  
37 adequate periods of time for maintenance and repair will be  
38 provided.

39 (8) Each type of accommodation in terms of the number of  
40 bedrooms, bathrooms, and sleeping capacity, and a statement of

1 whether or not the accommodation contains a full kitchen. For  
2 purposes of this description, a “full kitchen” means a kitchen  
3 having a minimum of a dishwasher, range, sink, oven, and  
4 refrigerator.

5 (9) A description of amenities available for use by the purchaser  
6 at each component site.

7 (10) A description of any incomplete amenities at any of the  
8 component sites along with a statement as to any assurance for  
9 completion and the estimated date the amenities will be available.

10 (11) The location of each component site of the multisite  
11 time-share plan, the historical occupancy of each component site  
12 for the prior 12-month period, if the component site was part of  
13 the multisite time-share plan during such 12-month time period,  
14 as well as any periodic adjustment or amendment to the reservation  
15 system that may be needed in order to respond to actual purchaser  
16 use patterns and changes in purchaser use demand for the  
17 accommodations existing at that time within the multisite  
18 time-share plan.

19 (12) A description of any right to make any additions,  
20 substitutions, or deletions of accommodations, amenities, or  
21 component sites, and a description of the basis upon which  
22 accommodations, amenities, or component sites may be added to,  
23 substituted in, or deleted from the multisite time-share plan.

24 (13) A description of the reservation system that shall include  
25 all of the following:

26 (A) The entity responsible for operating the reservation system,  
27 its relationship to the developer, and the duration of any agreement  
28 for operation of the reservation system.

29 (B) A summary of the rules and regulations governing access  
30 to and use of the reservation system.

31 (C) The existence of and an explanation regarding any priority  
32 reservation features that affect a purchaser’s ability to make  
33 reservations for the use of a given accommodation on a  
34 first-come-first-served basis.

35 (14) A description of any liens, defects, or encumbrances that  
36 materially affect the purchaser’s use rights.

37 (15) The name and principal address of the managing entity for  
38 the multisite time-share plan and a description of the procedures,  
39 if any, for altering the powers and responsibilities of the managing  
40 entity and for removing or replacing it, and a description of the

1 relationship between a multisite time-share plan managing entity  
2 and the managing entity of the component sites of a multisite  
3 time-share plan, if different from the multisite time-share plan  
4 managing entity.

5 (16) The current annual budget as provided in Section 11240,  
6 along with the projected assessments and a description of the  
7 method for calculating and apportioning the assessments among  
8 purchasers, all of which shall be attached as an exhibit to the public  
9 report.

10 (17) Any current fees or charges to be paid by time-share  
11 purchasers for the use of any amenities related to the time-share  
12 plan and a statement that the fees or charges are subject to change.

13 (18) Any initial or special fee due from the purchaser at closing,  
14 together with a description of the purpose and method of  
15 calculating the fee.

16 (19) A description of any financing offered by or available  
17 through the developer.

18 (20) A description of any bankruptcies, pending civil or criminal  
19 suits, adjudications, or disciplinary actions of which the developer  
20 has knowledge, which would have a material effect on the  
21 developer's ability to perform its obligations.

22 (21) A statement disclosing any right of first refusal or other  
23 restraint on the transfer of all or any portion of a time-share interest.

24 (22) A statement disclosing that—~~any~~ a deposit made in  
25 connection with the purchase of a time-share interest shall be held  
26 by an escrow agent until expiration of any right to cancel the  
27 contract and that—~~any~~ a deposit shall be returned to the purchaser  
28 if he or she elects to exercise his or her right of cancellation.  
29 Alternatively, if the commissioner has accepted from the developer  
30 a surety bond, irrevocable letter of credit, or other financial  
31 assurance in lieu of placing deposits in an escrow account: (A) a  
32 statement disclosing that the developer has provided a surety bond,  
33 irrevocable letter of credit, or other financial assurance in an  
34 amount equal to or in excess of the funds that would otherwise be  
35 placed in an escrow account, (B) a description of the type of  
36 financial assurance that has been arranged, (C) a statement that if  
37 the purchaser elects to exercise his or her right of cancellation as  
38 provided in the contract, the developer shall return the deposit,  
39 and (D) a description of the person or entity to whom the purchaser  
40 should apply for payment.



1 (23) If the time-share plan provides purchasers with the  
2 opportunity to participate in an exchange program, a description  
3 of the name and address of the exchange company and the method  
4 by which a purchaser accesses the exchange program.

5 (24) Any other information that the developer, with the approval  
6 of the commissioner, desires to include in the time-share disclosure  
7 statement.

8 (d) The commissioner may establish by regulation provisions  
9 regarding the delivery of the public report and other required  
10 information through alternative media forms.

11 (e) The commissioner may, upon finding that the subject matter  
12 is otherwise adequately covered or the information is unnecessary  
13 or inapplicable, waive any requirement set forth in this section.

14 ~~SECTION 1. It is the intent of the Legislature to enact~~  
15 ~~legislation amending the Real Estate Law to authorize a developer~~  
16 ~~of a time-share plan being sold in multiple states to submit a public~~  
17 ~~report issued by another state with an addendum including the~~  
18 ~~nonredundant disclosures required by California law.~~